IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6461 of 1999

Date of decision: 28/04/2005

BABUBHAI VAGHRI

Versus

CHANDRASINH JATUSINH RAJPUT - DELETED.

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Appearance:

1. First Appeal No. 6461 of 1999

MS MEGHA R CHITALIA for Appellant No.
DELETED for Respondent No. 1
NOTICE SERVED for Respondent No. 2,3
MR JD AJMERA for Respondent No. 3
MR PV NANAVATI for Respondent No. 3
MR VIBHUTI NANAVATI for Respondent No. 3

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

This appeal is directed against the award of the MACT (Aux.-II) Mehsana dated 7.7.1999 in MACP No. 404 of 1990.

Whether reporters of Local Papers may be allowed to see the Judgment?

Shortly stated, Babubhai (Claimant) sustained serious physical injuries in form of fracture of right tibia and fibula lower third with fixatation in accident which took place on 8.11.89 at about 6.30 p.m. on Dela-Mehsana road when the offending vehicle jeep bearing registration No. GUZ-6769 driven rashly and negligently by its driver hit the lorry from the back. Allegation is that the offending vehicle was being driven rashly and negligently by its driver, otherwise, accident would not have taken place. Claimant (35) was shifted to the Mehsana Civil Hospital on 8.11.1989, thereafter, referred and transferred to Civil Hospital, Ahmedabad as the concerned Orthopaedic Surgeon was not present. Claimant was admitted in Civil Hospital, Ahmedabad for two and half months and thereafter, was admitted in Ganesh Orthopaedic Hospital of Dr.G.K. Patel, Orthopaedic Surgeon, Mehsana. Claimant appears to have spent around six months in treatment on account of injuries. He was earning Rs.1000.00 p.m. by sale of vegetables. Opponents are owner and driver of offending vehicle and the insurance company with which the offending vehicle was insured. Written Statement of the owner and driver admit the factum of taking place of accident, however, negligence on the part of the jeep driver is denied. Insurance Company takes stand that there is collusion between the claimant and owner and driver of the vehicle. Claims Tribunal was called upon to decide whether the accident took place as alleged, whether the claimant is entitled to compensation. Claims Tribunal comes to the conclusion that the factum of accident has not been proved, therefore, claim has been rejected.

Consequently, this appeal at the instance of the claimant for setting aside the impugned award of the claims tribunal and for award of compensation.

Taking into consideration the evidence recorded by the Claims Tribunal, submissions made by Shri P.V.Nanavati, learned counsel for the insurance company and Ms. Megha Chitalia for claimant, question is whether the accident has taken place. Ms. Megha Chitalia,

learned counsel for the claimant submits that the accident has taken place, therefore, conclusion drawn by the Claims Tribunal is based upon misreading of the evidence on record. Accident took place on 8.11.1989 at about 6.30 p.m. on Dela Mehsana Road. This fact has been admitted by the opponents driver and owner of the offending vehicle, therefore, it was not required to be proved by the claimant. Insurance Company ought to have led evidence to disprove this fact which is not done by it. Matter is reported to the police. In the FIR, taking place of accident is mentioned, number of the vehicle is mentioned and wife of the claimant, being with him at the time of accident, is also mentioned. Contention that the FIR is lodged after three months cannot be appreciated in view of the explanation by the claimant. He was in the Hospital for number of months, therefore, could not lodge FIR immediately after taking place of accident. Late filing of FIR does not mean that the accident did not take place, rather, it shows that the accident took place and mentions other facts stated hereinabove. Any way, it is not a criminal case where immediate lodging of FIR is important. In matters of accident, it is relevant. It is stated in the medical certificate dated 8.11.1989 (Exh.45) that the claimant was brought to the General Hospital, Mehsana on 8.11.1989 at 8.00 p.m. without Police Yadi and examined by the Doctor. Contents of certificate issued by Dr. RI Patel, Medical Officer, General Hospital, Mehsana are reproduced inextenso.

"H/O Injury by vehicular accident.

O/E

(1) Lacerated wound lower 1/3 of right leg with projecting fractural bone of tibia 6.0 cm x 4.0 cm x bone deep.

(2) Multiple superficial abrasion on left lower limb.

(3) Partial amputation of left thumb.

He was admitted in Ward and transferred to Civil Hospital, Ahmedabad as Orthopedic Surgeon is not present in head quarter on 8.11.89 at 10.00 p.m.

According to my opinion, above injuries are possible by hard and blunt object and can recover in six to eight weeks if no complication

arise."

From perusal of the above medical certificate, it is further clear that the accident took place on stated date, time and the claimant suffered injuries described therein. Claimant was admitted in ward and transferred to Civil Hospital, Ahmedabad since Orthopaedic Surgeon was not present in Head Quarter on that date, at that time. Respondents did not dispute the contents of medical certificate (Exh.46), therefore, there is enough evidence to prove taking place of accident, admission and treatment sought by the claimant in hospitals. In this back ground, conclusion drawn by the claims tribunal is set aside as not sustainable.

Having come to the aforesaid conclusion, question for consideration is about the entitlement of the claimant for compensation. He was 35 year old at the time of accident, earning Rs.1000.00 p.m. by selling vegetables. He suffered disability to the extent of 21%. He remained indoor patient for three months and states that he could not do business for six months. In this back ground, instead of working out compensation item-wise, we award lumsum compensation of Rs.55,000.00 to the claimant.

Consequently, appeal is partly allowed. Impugned award is set aside. Claimant shall be paid the compensation of Rs.55000.00 (Rupees fifty five thousand only) by the Insurance Company with which the vehicle was insured with interest at the rate of 9% p.a. from the date of application 17th March, 1990 till the date of realisation/payment. Payment be made in one month by way of an account payee cheque on proper verification from the date of receipt of certified copy of judgment and decree which may be rendered by the Registry within fifteen days. Parties to bear their own costs of this Court.

CHIEF JUSTICE

[H.K.RATHOD]
Justice

Vyas